

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

BACK VENTURES, L.L.C. SERIES D,

Appellant,

v.

SAFEWAY, INC.,

Respondent.

DOCKET NUMBER WD75837

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 6, 2013

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Anthony Rex Gabbert, Judge

JUDGES

Division Three: Hardwick, P.J., and Pfeiffer and Martin, JJ.

CONCURRING.

ATTORNEYS

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Attorney for Appellant,

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Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

BACK VENTURES, L.L.C. SERIES D,)
)
) **Appellant,**)
 v.) **OPINION FILED:**
) **August 6, 2013**
 SAFEWAY, INC.,)
)
) **Respondent.**)

WD75837

Clay County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, and Mark D. Pfeiffer and Cynthia L. Martin, Judges

Back Ventures, L.L.C. Series D (“Back Ventures”) appeals from the Circuit Court of Clay County, Missouri’s grant of summary judgment to Safeway, Inc. (“Safeway”), in Back Ventures’ suit for breach of a lease agreement.

The issue in this case is whether Safeway was liable on its lease with Back Ventures when Safeway’s assignor surrendered the leased premises to Back Ventures before the end of the lease term in a deteriorated condition. Back Ventures filed a lawsuit, seeking reimbursement from Safeway for damages.

Safeway filed a motion for summary judgment, asserting that Back Ventures terminated the lease in 1997 as a result of a letter sent to the parties by Back Ventures’ attorney, which notified the parties that Back Ventures declared the term of the lease ended and demanded possession of the premises. Safeway asserted that it had no further legal obligation under the lease as a result. Safeway also raised the affirmative defenses of waiver, estoppel, and laches, and contended that Missouri’s five-year statute of limitations, § 516.120, applied to Back Ventures’ claims under the lease. The trial court granted summary judgment to Safeway, and subsequently entered a final judgment in Safeway’s favor when it entered a default judgment against Safeway’s assignee.

Back Ventures appeals, arguing that the trial court erred in granting summary judgment in favor of Safeway because: (i) the 1997 attorney’s letter did not terminate the lease (in that

Safeway's assignee remained in possession of the leased premises until December 2009), and did not irreparably destroy the privity of contract between Safeway and Back Ventures; (ii) Back Ventures' claims against Safeway were not precluded by the affirmative defenses of waiver, estoppel, or laches; and (iii) Back Ventures' claims were not barred by the applicable statute of limitations.

REVERSED AND REMANDED.

Division Three holds:

1. Because one plausible interpretation of the facts in the record is that Back Ventures withdrew its 1997 termination of the lease and that Safeway did not rely to its detriment on the termination before it was withdrawn, summary judgment was not appropriate if based on Safeway's argument that it could not be liable in 2010 for a lease that had been terminated in 1997.

2. The undisputed facts do not establish Safeway's right to assert the affirmative defenses of waiver, estoppel, or laches, in support of its motion for summary judgment because: (1) Back Ventures did not "intentionally relinquish" Safeway's privity of contract obligations under the lease; (2) Back Ventures did not neglect to provide notice of breaches under the lease "for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what in law, should have been done"; and (3) Back Ventures did not engage in "an admission, statement, or act inconsistent with" Back Ventures' claims against Safeway in the lawsuit.

3. Because the lease had not been terminated in 1997, and the damages claimed in the lawsuit were not sustained until December 2009 when Safeway's assignee notified Back Ventures that it would no longer meet its obligations under the lease, the 2011 lawsuit was timely filed.

Opinion by: Mark D. Pfeiffer, Judge

August 6, 2013

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